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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,229	06/19/2002	Bernardus Johannes Elisabeth Maria Janssen	DEH010	9511
7590 06/09/2004			EXAMINER	
Diederiks & Whitelaw 12471 Dilligham Square #301 Woodbridge, VA 22192			COMSTOCK, DAVID C	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/049,229

**Applicant(s)**

JANSSEN ET AL.

**Examiner**

David Comstock

**Art Unit**

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-11, 13-17, 19 and 20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 5-11, 13-17, 19 and 20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 11 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claims 10, 16, 17, 19, and 20 are objected to because of the following informalities:

In claim 10, line 2, before "space," "the" should be changed to --a-- to avoid lack of antecedent basis problems.

In claim 16, line 3, before "pressure," "the" should be changed to --a-- to avoid lack of antecedent basis problems.

In claim 19, line 4, before "space," "the" should be changed to --a-- to avoid lack of antecedent basis problems.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14, line 3, "the cup component" lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 5-7, 10, 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Tronzo (4,653,489).

Tronzo discloses an elongate tubular tool comprising cement delivery means 50 for forcing cement under pressure through a tube 46. (See Figs. 1-4.) The distal end of

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the tool includes a threaded mating portion 48 to releasably mount or lock a component 32 thereto. The threaded portion also constitutes a seal since it functions to pass cement under pressure, not through or near any portion of the threads, but rather, to the end of the component and through delivery holes 40, 42, 44 (see Figs. 2-4).

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Amstutz (3,859,992).

Amstutz discloses a device 10 comprising an elongate body 21 having a head 12 and a seal 16 on the head to mount to an acetabular cup. The device also includes a passage 15, 24 (see Fig. 2).

Claims 5-7, 9-11, 13-17, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown (5,951,563).

Brown discloses a device comprising a tool 49, 21, 22 having an elongate tubular housing 49 and a cement delivery means 50. (See Figs. 1 and 2.) A component 11 is releasably mounted to a mating part 21, 22 at the distal end of the tool by retractable locking elements 17b-20b carried by the mating part. The mating part comprises a head, i.e. the main portion of part 21, 22, including its bottom surface, that has a seal 26 and passages 27, 30, 31-33 and 31a-33a (see Fig. 1). The seal can be characterized as an "O-ring" because it is generally shaped like an "O" due to its semi-circular configuration and the large opening 30 through its center (see Fig. 1). The device includes pressure transducers, i.e. sensors, 51, 57, to assist the surgeon in noting pressure being applied by correlation with viscosity (see Figs. 4 and 6; col. 3, lines 32, 36-40, and 48-53; col. 4, lines 22-27; col. 6, line 50 - col. 7, line 4; and col. 7, line 49 -

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col. 8, line 39). The device includes a gun (not shown) that connects to quick-disconnect 50 for delivering cement under pressure (see col. 6, lines 28-29). The device also includes means 55 for forcing the cement through the tube.

Claims 5 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Rudischhauser et al. (6,471,639).

Rudischhauser et al. disclose a tool having an endoscope 16 and a cement delivery means 22, i.e. the supply channel(s) (see Fig. 2 and col. 6, lines 10-14). It is noted that a component, i.e. almost any structure, could be releasably mounted to the end of the tool. Likewise, the structure, i.e. the supply channel 22, is capable of performing the intended use, i.e. delivering cement., and therefore, meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D. Comstock  
31 May 2004



EDUARDO C. ROBERT  
PRIMARY EXAMINER